IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE ACTING CHIEF JUSTICE MR.K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 15TH FEBRUARY 2007 / 26TH MAGHA 1928

WP(C).No. 3961 of 2007(S)

PETITIONER:

K.U.JOHN, S/O. ULAHANNAN,
KALLATTUKUZHIYIL HOUSE, KAKKOOR P.O.,
THIRUMARADY VILLAGE, MUVATTUPUZHA TALUK,
ERNAKULAM DISTRICT.

BY ADV. SRI.JOHN JOSEPH(ROY)

RESPONDENTS:
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1. THE STATE OF KERALA, REPRESENTED BY
THE EXECUTIVE ENGINEER, PWD ROAD DIVISION,
MUVATTUPUZHA.
2. THE REVENUE DIVISIONAL OFFICER,
MUVATTUPUZHA.
3. THE ASSISTANT EXECUTIVE ENGINEER,
PWD ROADS SUB DIVISION, MUVATTUPUZHA.
4. VARGHESE K.T.,
CONTRACTOR, MANAKKUNNATHU HOUSE,
PIRAVOM P.O., ERNAKULAM DISTRICT.

R1 TO R3 BY GOVT PLEADER SRI T.B.HOOD

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 15/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE, J.

W.P.(C) NO. 3961 of 2008

Dated this the 3rd day of March , 2008

JUDGMENT

Under challenge in this writ petition are Exts.P6 and P8 orders passed by the Ombudsman for the Local Self Government Institutions and Exts.P9 and P10 consequential orders passed by the Panchayat. Under Ext.P6, the Ombudsman, on entertaining a complaint submitted by the party respondents that the petitioner has encroached into the Panchayat puramboke, directed a measurement of the property and accordingly measurement was conducted and report was submitted to the Ombudsman. It is considering that report, that Ext.P8 order has been passed by the Ombudsman directing the Secretary of the Panchayat to take necessary steps for demolishing the unauthorised construction of the compound wall.

2. I have heard the submissions of Sri. George Varghese Perumpallikuttiyil, the learned counsel for the petitioner,

Sri.Gopakumar the learned counsel for the second respondent, Sri.P.B.Sahasranaman the learned counsel for the third respondent and Sri.K.J.Muhammed Anzar, the learned Government Pleader for the fourth respondent Tahsildar.

3. The learned counsel for the petitioner would submit at the very outset that the orders passed by the Ombudsman were beyond the jurisdictional competence of the Ombudsman. since it is not for the Ombudsman to consider the question whether there is encroachment of puramboke whether it be a Panchayat puramboke or revenue puramboke. The counsel also submitted that the measurement, on the basis of which the Ombudsman passed Ext.P8 order, was conducted without notice to the petitioner and in his absence. Counsel lastly submitted that what has been reported on the basis of the measurement is that the land in question is revenue puramboke which does not vest in the Panchayat.

3. The submissions of the learned counsel for the petitioner regarding the jurisdictional competence of the Ombudsman certainly have technical attractiveness. But, even then this court does not want to perpetuate the situation of the petitioner

continuously enjoying puramboke lands. Considering the grievance that the measurement in question was conducted without notice to the petitioner and in his absence, I dispose of this Writ Petition directing the fourth respondent to facilitate fresh measurement of the property by a competent surveyor with notice to the petitioner and the third respondent. Once such a measurement is conducted and the puramboke is identified, the fourth respondent will initiate appropriate action for abating the encroachment and evicting the petitioner from puramboke, if any, wrongfully possessed by him. This judgment will not stand in the way of the petitioner making application for assignment of the revenue puramboke land in accordance with the relevant law.

PIUS C. KURIAKOSE,
JUDGE.

dpk